S.B.CIVIL MISC. APPEAL NO.530/2001.
(Lalit Kumar Vs. Devendra Kumar & others)

Date of Order :: 11.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Usman Gani, for the appellant.
Mr.L.D.Khatri, for the respondent.

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In view of the notice for final disposal issued on 03.09.2001 and in view of a short point involved, learned counsel for the parties have been heard finally.

The appellant-claimant submitted a claim application to the Motor Accidents Claims Tribunal, Bhilwara claiming compensation for the injuries sustained in a motor accident that occurred in the night intervening 29.07.1991 and 30.07.1991 while the claimant was travelling in a bus bearing registration No.RJ 14/ A 0425 when the bus rammed into a truck bearing registration No.HYT 2697. Stating involvement of both the vehicles and accident having occurred for rash and negligent driving of the bus and so also improper and unindicated parking of the truck on the road, the claimant has alleged to have sustained several injuries including fractures on both legs and having remained under regular treatment and having undergone several operations and yet being

unable to stand on his feet and unable to walk without support. The claimant has stated his age at 22 years and his working as an Assistant at an electrical goods shop in Kuwait earning about Rs.15,000/- per month in Indian Currency and has claimed compensation on various heads to the tune of Rs.4,21,200/-.

The claim application was filed on 29.01.1992 and it appears from the record that defects were pointed out by the office that copy of driving licence was not filed and certified copies filed by the claimant were illegible. It appears that the matter remained pending for a long time for removal of defects and ultimately on 22.10.1994 it was recorded that the claimant moved an application that the driving licence was not available in criminal case file and thereupon the case was ordered to be registered and notices were issued on 22.10.1994. The claim application was registered at No.412/1994 and the matter thereafter remained pending for long for the purpose of service on the non-applicants and ultimately service was completed on 09.06.1999 and then time was granted to the applicant to produce disability certificate. The matter was again adjourned on several dates for filing of the disability certificate and though on 27.04.2000 the Tribunal recorded that the certificate was filed, yet on 09.10.2000 the

Tribunal recorded that certificate was not filed. Issues were framed on 09.10.2000 and the case was fixed for claimant's evidence on 03.11.2000.

On 03.11.2000 last chance was given to the claimant to produce evidence on 08.01.2001; and on 08.01.2001 another adjournment was granted to the claimant on costs of Rs.100/- with the stipulation that no further adjournment would be granted. On the next date i.e. 22.01.2001, the Tribunal proceeded to close down the evidence of the claimant and also made the impugned award rejecting the claim application as the case was of no evidence. Hence, this appeal.

Learned counsel for the claimant has strenuously contended that the claimant having suffered extensive injuries was unable to prosecute his case properly but the technical rules of procedure ought not to have been adopted in such strict manner by the Tribunal while dealing with a claim for compensation where the Tribunal may treat even the report of accident as an application for compensation under the Act (vide Section 166(4) of the Motor Vehicles Act, 1988). Learned counsel has referred to the documentary evidence including the injury report, the photographs of the claimant and so also the certificate filed on 24.07.2000 showing that the appellant

had suffered compound fractures on both the legs and has developed deformity in the legs and partial permanent disablement at 20% has been certified by the Orthopedist, M.G. Hospital, Bhilwara where the appellant had undergone the treatment. Learned counsel submitted that the Tribunal has been in error in rejecting the claim application as if dealing with ordinary civil suit and in not affording adequate opportunity to the appellant. Learned counsel for the respondent has opposed with the submissions that the claimant was never serious about his claim case and in the overall circumstances of the case, the Tribunal cannot be said to have erred in closing down the evidence after affording more than enough opportunities.

Having heard learned counsel for the parties and having examined the record, this Court is constrained to observe that the approach of the learned Tribunal while dealing with this claim case cannot be appreciated.

It is of course true that the matter had remained pending for some time and there was some laxity on the part of the claimant also; but then, the claimant, 22 years in age, has pointed out the extensive injuries suffered by him that led to his being bed ridden and it has been averred that even

while filing the claim application, the claimant was under treatment. The injury report also prima facie shows substantial injuries on both the legs with advice for X-Ray; and the Orthopaedist of the hospital has certified the claimant to have suffered disability at 20%. The claim application was kept pending for a long time for want of driving licence that was ultimately pointed out to be not available in the criminal case record; and then it took longer time while the non-applicants relating to the two vehicles were served. In any case, service was complete on 09.06.1999 and a disability certificate had been produced by the claimant on 27.04.2000 and this fact has specifically been noticed by the Tribunal in its order-sheet. Thereafter, on three consecutive dates of 09.05.2000, 26.05.2000 and 22.6.2000, the matter was adjourned only because the Presiding Officer was on leave. It was again adjourned on 19.08.2000 for the Presiding Officer having been transferred. On the very next date of 09.10.2000, learned Presiding Officer recorded that the disability certificate was not produced; that issues were framed; and that the matter be fixed for evidence of the claimant on 03.11.2000.

On 03.11.2000 an adjournment was sought on behalf of the claimant and last opportunity was granted. On the next date of 08.01.2001 another opportunity was granted on costs

of Rs.100/- and then on the next date of 22.01.2001, learned Judge observed that it was about seven years old matter and sufficient opportunities had been granted to the applicant and there was no reason for the applicant being not present and the time was 1.15 p.m. and, therefore, the evidence was closed; and taking it to be a matter of no evidence, the claim was rejected. The approach of the learned Judge of the Tribunal has been pedantic and unrealistic, to say the least.

Learned Judge has failed to consider that in a motor accident claims case, where even a no-fault liability award had not been made, the injured claimant was not to gain anything by avoiding to lead evidence; and there could be no such hurry for which at 1.15 p.m. the Tribunal would be compelled to close down the evidence and pronounce the award then and there, without even a peep into the record. The impatience exhibited by the learned Judge is difficult to countenance. An adjournment on 22.01.2001 could have been granted without causing prejudice to any of the parties. Noteworthy it is that the case was proceeding ex parte against the owners and drivers of the vehicles concerned and only insurers were contesting the matter.

This Court is of opinion that rules of procedure are intended to subserve the cause of justice and it is always preferred to decide a case on merits rather than throwing out a party on mere technicalities.

Moreover, in a motor accidents claims case, the Tribunal cannot be said to be justified in adopting such a procedure where no order had been passed under Section 140 of the Motor Vehicles Act despite a disability certificate having been produced by the claimant on 27.04.2000 and yet observing on 09.10.2000 that certificate was not produced; and then granting two opportunities for evidence and treating it to be the end of the matter. It is noticed that in this very case after filing of the certificate by the claimant on 27.04.2000 consecutively on four dates the matter was adjourned, from 09.05.2000 to 09.08.2000, only because of unavailability of the Presiding Officer of the Tribunal. Merely because a matter appears to be old in age, that by itself cannot be taken as a justification for simply rushing through the matter and not taking care of the requirements of interest of justice.

In the aforesaid view of the matter, the impugned award dated 22.01.2001 deserves to be set aside. No evidence having been led, it appears appropriate to remand the matter

to the Tribunal that shall proceed in accordance with law; and afford reasonable opportunity to the parties to lead their evidence.

As a result of the aforesaid, this appeal is allowed to the extent indicated above, the impugned award dated 22.01.2001 is set aside; Claim Case No.412/1994 shall stand restored with the Motor Accidents Claims Tribunal, Bhilwara for trial and disposal in accordance with law. The parties are directed to remain present before the Tribunal on 24.08.2006. The record be sent back immediately. Costs of this appeal shall follow the final result of claim application.

(DINESH MAHESHWARI), J.

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